

1 JOHN H. CLARKE [*Pro Hac Vice*]
2 Telephone: (202) 332-3030
3 JOHN F. DUNNE, JR. [SBN 32854]
4 1601 Cloverfield Boulevard
5 Second Floor, South Tower
6 Santa Monica, California 90404-4084
7 Telephone: (310) 393-9351
8 Facsimile: (310) 230-4066
9 *Attorneys for Plaintiff*

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 H. RAY LAHR,) Case No. 03-08023 AHM (RZx)
21)
22 Plaintiff,) **PLAINTIFF'S STATEMENT OF**
23) **GENUINE ISSUES IN OPPOSITION**
24 v.) **TO CIA MOTION FOR PARTIAL**
25) **SUMMARY JUDGMENT**
26 NATIONAL TRANSPORTATION)
27 SAFETY BOARD, *et al.*)
28 Defendants.)
29 _____)

30 Date: October 31, 2005
31 Time: 10:00. a.m.
32 Place: Courtroom 14, 312 N. Spring
33 Street, Los Angeles, CA 90012
34 Judge: Honorable A. Howard Matz

35 Plaintiff submits this statement of genuine issues, under L.R. 56-2, setting
36 forth issues of material fact necessary to be litigated. Facts 1-73 below correspond
37 to the facts and supporting evidence presented in the statement of uncontested
38 facts filed by the CIA. These facts are followed by additional material facts and
39 supporting evidence also showing genuine issues.

1 Citations to numbered exhibits refer to the instant opposition to CIA
2 summary judgment, and citations to exhibit letters refer to plaintiff's record in his
3 opposition to the NTSB's motion for summary judgment.

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5 MOVING PARTY'S ALLEGED
6 UNCONTROVERTED FACTS

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RESPONSE

1 1. TWA Flight 800, a Boeing 747-100,
2 exploded in flight and crashed into the
3 Atlantic Ocean off Long Island on the
4 night of July 17, 1996.

5 1. Plaintiff agrees that this is
6 undisputed.

7

8 2. The explosion of TWA Flight 800
9 precipitated a criminal investigation by
10 the Federal Bureau of Investigation
11 (FBI) and a civil investigation by the
12 National Transportation Safety Board
13 (NTSB). [Bur. Decl. ¶ 50] [Moye Decl.
14 ¶ 11]

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 2. Plaintiff denies that this is
 undisputed. The FBI did not conduct a
 good faith "criminal investigation." Its
 function was to withhold evidence,
 misrepresent evidence, alter and
 removed debris from the reconstruction
 hanger, ban evidence from presentation
 at public hearings, including all
 eyewitness testimony. Supporting
 affidavits are cited in plaintiff's
 statements 74 through 78 below.

 3. During the criminal investigation,
 dozens of eyewitnesses reported having
 seen "a 'flare or firework' ascend and
 culminate in an explosion. [Bur. Decl. ¶
 50]

 3. Plaintiff denies that this is
 undisputed. [D Donaldson Aff. Bates
 101 Ex 16 NTSB Exhibit 4A Witness
 Group Factual Report (based on 458 of
 the FBI's 736 302s): "Of the 183

1 [eyewitnesses] who observed a streak of
2 light... 96 said that it originated from
3 the surface."] (Note: NTSB withheld
4 this exhibit from its public docket.)
5

6 4. "[I]nternational terrorism is an
7 authorized CIA [Central Intelligence
8 Agency] area of analysis."

9
10 5. Accordingly, the FBI asked the CIA
11 to try to determine as part of its
12 investigation whether the "flare or
13 firework" was a missile. [Bur. Decl. ¶
14 50 nn. 5, 14]

15 4. Plaintiff agrees that this is
16 undisputed.

17 5. Plaintiff denies that this is
18 undisputed. The FBI asked the CIA to
19 assist in its efforts to obfuscate
20 eyewitness accounts. [X Lahr Aff.
21 Bates 303-05 Ex 1 (April 30, 1999,
22 Transcript of CIA Briefing to NTSB
23 Witness Group): "CIA ANALYST # 1:
24 The conclusion that the eyewitnesses
25 were only seeing the burning aircraft
26 was made at 10:00 p.m. at night on the
27 30th of December 1996.... [A]s I was
28 sitting behind the computer.... There
was a realization... that you can explain
what the eyewitnesses are seeing with
only the burning aircraft.... I
immediately alerted... the FBI... We
wanted them to be aware of this so that
they could start proceeding with the
investigation..."

1
2 6. The task of making such a
3 determination was assigned within the
4 CIA to weapons analysts within the
5 Directorate of Intelligence (DI) Office
6 of Weapons, Technology and
7 Proliferation (OWTP).

8
9 7. DI is the component of the CIA that
10 "analyzes, interprets, and forecasts
11 foreign intelligence issues and world
12 events," and produced "finished
13 intelligence reports for dissemination to
14 the policy makers in the United States
15 Government."

16
17 8. OWTP was a predecessor of the
18 Office of Transnational Issues (OTI).

19
20 9. Relying principally on materials
21 furnished by the FBI, including
22 eyewitness reports, radar tracking data
23 and certain NTSB observations
24 regarding the Cockpit Voice recorder,
25 the analysts were able to reconstruct the
26 approximate flight path of TWA Flight
27 800 from the instant its recordings
28 ended until it struck the water. [2nd

6. Plaintiff agrees that the CIA's "task"
was assigned to its Office of Weapons,
Technology and Proliferation.

7. Plaintiff agrees that this is
undisputed.

8. Plaintiff agrees that this is
undisputed.

9. Plaintiff denies that this is
undisputed. The government deleted
Radar and FDR data indicating missile
fire, deleted portions of the videotape of
the debris on the ocean floor, and Radar
disproves the zoom-climb conclusion.
[E Stalcup Aff.] Bates 126 ¶ 4: "The
last sweep of the River Head Radar
shows the four data points deleted and a

1 Bur. Decl. ¶ 4]

2 pied wedge right where flight 800 was,
3 and that's where any missile would have
4 been that was going to hit it. Now that
data has been completely deleted....

5 It's just deleted... that's not something
6 that happened by itself."] L Speer

7 Aff. Bates 186-87 ¶ 30: "And so we're
8 watching these videotapes of the bottom
9 of the ocean and I notice that the time
10 clock stops in a given run.... they're
11 gaps in the time clock.... And I said,
12 'Well look at the gaps in the time clock
13 here. There's no reason for those gaps
14 to occur unless the tape has been edited.
15 I want to see the unedited version.' 'No,'
16 was the response." BB Schulze Aff.

17 Bates 467-68, ¶¶ 3, 5-6: "I have
18 devoted between 1200 and 1500 hours
19 reviewing the entire collection of the
20 NTSB Reports and other official NTSB
21 documents related to the TWA Flight
22 800 Cockpit Voice Recorder (CVR) and
23 the Flight Data Recorder (FDR)
24 Accident Tapes.... Detailed analysis
25 performed by me in conjunction with
26 my peers of the NTSB's reports on the
27 flight parameter data from the very end
28 of the FDR tape revealed a clear and

1 glaring omission of the last three to four
2 seconds of the FDR tape data.... The
3 limited evidence I have been able to
4 extract from the FL 800 CVR and the
5 Bruntingthorpe sound waveforms
6 indicates that an incomplete and
7 inconclusive Sound Spectrum Report
8 has been presented to the public by the
9 NTSB regarding the 105 millisecond
10 sound at the very end of the CVR tape.]

11 [D Donaldson Aff. Bates 73 Ex 1
12 (comparing *Islip Primary Hits* with
13 NTSB Ex 22C showing aircraft
14 disappeared from radar 16-seconds
15 before government claim)] [Id. Bates
16 74 Ex 2 (same)] [Id. Bates 118 Ex 25
17 & Bates 119 Ex 26 comparing fall times
18 of climb scenarios vs. Radar hits] [E
19 Stalcup Aff. Bates 120, ¶¶ 4, 6 "[R]adar
20 data indicates that Flight 800 began an
21 immediate descent... the radar evidence
22 contradicts all NTSB crash simulations
23 that include Flight 800 climbing sharply
24 after exploding.] [V Pence Aff. Bates
25 260 ¶ 14: "I believe that it would have
26 tumbled, rolled, and basically dropped
27 like a stone. And this is exactly what
28 the radar data that has subsequently

1 been looked at says happened."] 2

3 10. The analysts concluded that, just
4 after it exploded, it pitched up abruptly
5 and climbed from its last recorded
6 altitude of approximately 13,800 feet to
7 a maximum altitude of approximately
8 17,000 feet. [2nd Bur. Decl. ¶ 4]

9
10 10. Plaintiff denies that the analysts
11 concluded a zoom-climb. CIA analysts
12 knew that an explosion in the Center
13 Wing Tank could not possibly be the
14 initiating event because the tank had no
15 fuel in it, there was no ignition source,
16 and the fuel is not flammable.

17 Supporting affidavits are cited in
18 plaintiff's statements 79 through 81
19 below. The zoom-climb is knowingly
20 false as the CWT spar supports the
21 wings, engine thrust was cut with the
22 loss of the nose, the wing(s) are known
23 to have separated early in the crash
24 sequence, the zoom-climb is known to
25 be aerodynamically impossible, and the
26 aircraft did not slow and so could not
27 have climbed. Supporting affidavits are
28 cited in plaintiff's statements 79 through
 86 below.

23
24 11. This conclusion was consistent with
25 information provided by NTSB
26 investigators and engineers for the
27 Boeing Company (Boeing), who
28 determined that the front third of the

11
12 11. Plaintiff denies that this is
13 undisputed. Immediately upon its
14 publication, Boeing distanced itself
15 from defendant's zoom-climb theory and
16 explained that it provided only basic

1 aircraft separated from the fuselage
2 within four seconds after the aircraft
3 exploded. [2nd Bur. Decl. ¶ 4]

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9 aerodynamic information. [D
10 Donaldson Aff. Bates 114 Ex 21
11 (Boeing Nov. 18, 1997 press release):
12 "[B]oeing was not involved in the
13 production of the video shown today,
14 nor have we had the opportunity to
15 obtain a copy or fully understand the
16 data used to create it. While we
17 provided basic aerodynamic information
18 to assist in the CIA's analysis of the
19 airplane's performance, we are not
20 aware of the data that was used to
21 develop the video. The video's
22 explanation of the eyewitness
23 observations can be best assessed by the
24 eyewitnesses themselves."]

25
26 12. The analysts further concluded that,
27 about 20 seconds after the explosion, a
28 fireball erupted and the aircraft went
into a steep and rapid descent,
producing an increasingly visible fire
trail. [2nd Bur. Decl. ¶ 5]

12. Plaintiff denies that this is
undisputed. [D Donaldson Aff. Bates
63 ¶ 76: "[T]he biggest problem with
the CIA scenario and that is the time it
would take to hit the water. It would
take at least 54 seconds after reaching
17,000 for the aircraft to hit the water
assuming it reaches a terminal velocity
of 450 ft/sec. But it is only visible on
radar for another 20 seconds. Where
was the aircraft for those extra 34

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seconds? There is only one conclusion.
It was already in the water because there
never was a "zoom climb."]

5 13. About 42 seconds after the
6 explosion, the aircraft's left wing
7 separated, releasing unburned fuel
8 which subsequently ignited in a cascade
9 of flames, and approximately seven
10 seconds later, the debris hit the water.
11 [2nd Bur. Decl. ¶ 5]

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20 14. The eyewitness sightings of greatest
21 concerns – those that raised the
22 possibility that the aircraft had been
23 struck by a missile – took place after the
24 aircraft exploded. [2nd Bur. Decl. ¶ 6]

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27
28
13. Plaintiff denies that this is
undisputed. **[D Donaldson Aff.** Bates
63 ¶ 76: "[T]he biggest problem with
the CIA scenario and that is the time it
would take to hit the water. It would
take at least 54 seconds after reaching
17,000 for the aircraft to hit the water
assuming it reaches a terminal velocity
of 450 ft/sec. But it is only visible on
radar for another 20 seconds. Where
was the aircraft for those extra 34
seconds? There is only one conclusion.
It was already in the water because there
never was a "zoom climb."]

14. Plaintiff denies that this is
undisputed. The two eyewitnesses
featured in the video-animation
unequivocally reject its depiction, as do
airborne eyewitnesses, and all others,
and all witnesses who saw a projectile
saw it traveling at supersonic speed.
Supporting affidavits are cited in
plaintiff's statements 87 through 92

- 1 below.
- 2
- 3 15. Accordingly, the analysts concluded
- 4 that the eyewitnesses saw a Boeing 747
- 5 in various stages of crippled flight, not a
- 6 missile. [2nd Bur. Decl. ¶ 6]
- 7
- 8
- 9
- 10 15. Plaintiff denies that this is
- 11 undisputed as the analysts knew that
- 12 missile fire was the initiating cause of
- 13 the disaster. [C. Hill Aff. Bates 43-44, ¶
- 14 17: "On more than one occasion during
- 15 these proceedings [press conferences] I
- 16 heard [former Chief, Joint Chiefs of
- 17 Staff] Admiral Moorer express his
- 18 opinion publicly and with members of
- 19 the press present that it was a missile
- 20 that brought TWA-800 down..."] [E.
- 21 Stalcup Aff. Bates 129-30: "*TWA Flight*
- 22 *800 Probable Cause Announced*, "A
- 23 surface-to-air missile, launched from the
- 24 ocean off the coast of Long Island rose
- 25 up and exploded at or near TWA Flight
- 26 800." [Q. Gross Aff. Bates 211 ¶ 7:
- 27 "When I saw photographs of the left
- 28 side, with that large indentation forward
- of the wing, then I immediately was
- curious, what in the world could cause it
- to be dented in. It would have to be
- something external to the aircraft."] [U.
- Perry Aff. Bates 251 ¶ 38: "[I]t was so
- clear, and it was so vivid, was so
- obvious that what was happening was

1 that this plane was being assaulted..."]
2

3 [X Lahr Aff. Bates 369 ¶ 8 Ex 10
4

5 (April, 2000, *International Association*
6 *of Machinists and Aerospace Workers*
7 submission to NTSB final Report):
8

9 "Approximately nineteen (19) holes in
10 the fuselage below the L3 door that
11 appear to originate from the exterior of
12 the aircraft."
13

14 16. This conclusion was incorporated
15 into a video produced by the CIA and
16 shown to the public by the FBI on
17 November 18, 1997. [2nd Bur. Decl. ¶
18 6]
19

20 17. The CIA subsequently obtained
21 additional data from the NTSB and
22 continued to refine its analysis. [2nd
23 Bur. Decl. ¶ 6]
24

25 16. Plaintiff agrees that this is
26 undisputed.
27

28 17. Plaintiff denies that the CIA
29 "refine[d] its analysis." Plaintiff avers
30 that defendant generated records after
31 the broadcast of the zoom-climb
32 animation to try and justify its already-
33 released final disposition. The CIA
34 generated many additional records after
35 the public release of its zoom-climb
36 analysis to try and justify its conclusion,
37 including analysis performed *after*
38 *plaintiff's submission of his FOIA*
39 *request.* [3 Schulze Aff Bates 97 ¶ 69:
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"This computer program is one of the major CIA records sought by the subject FOIA. This 2004 program was generated after the 2003 FOIA request!"]

18. However, the CIA did not issue a final report because its conclusion that the eyewitnesses did not see a missile did not change. [2nd Bur. Decl. ¶ 6]

19. By letters dated October 8, 2003, plaintiff submitted requests to the NTSB and CIA under the Freedom of information Act (FOIA), 5 U.S.C. § 552, for certain records pertaining to the explosion of TWA Flight 800.

20. Broken into 105 sub-requests, the request to the CIA sought "all records upon which [the] released aircraft flight path conclusion was based."

21. By letter dated October 20, 2003, the CIA acknowledged receipt of plaintiff's request.

22. On November 6, 2003, plaintiff

18. Plaintiff denies that this is undisputed. The CIA's November 1997 video-animation was its "final report" under the FOIA.

19. Plaintiff agrees that this is undisputed.

20. Plaintiff agrees that this is undisputed.

21. Plaintiff agrees that this is undisputed.

22. Plaintiff agrees that this is

1 commenced this action to compel
2 production of the records he had
3 requested from the NTSB and CIA.
4

undisputed.

5 23. By order dated and filed May 13,
6 2004, the Court extended through
7 February 28, 2005 the time of the CIA
8 "to complete its processing of the CIA-
9 originated records (not requiring third
10 agency coordination) responsive to
11 plaintiff's requests."

12
13 24. By stipulation and order dated and
14 filed July 13, the Court struck all but 17
15 of the 105 sub-requests contained in
16 plaintiff's request to the CIA.

17
18 25. The Office of Information
19 Management services, Public
20 Information Programs Division (PIPD),
21 is the initial reception point for all FOIA
22 requests.

23
24 26. The CIA does not maintain a
25 single, centralized record system.

26
27 27. Accordingly, each FOIA request
28 that the CIA receives is reviewed by

23. Plaintiff agrees that this is
undisputed.

24. Plaintiff agrees that this is
undisputed.

25. Plaintiff agrees that this is
undisputed.

26. Plaintiff agrees that this is
undisputed.

27. Plaintiff agrees that this is
undisputed.

1 PDIC to determine "which directorates
2 of the CIA might reasonably be
3 expected to possess records that [might]
4 be responsive to [the] request.

5

6 28. In this case, plaintiff sought "the
7 underlying information on which an
8 analytic product was based."

9

10 29. Accordingly, PDID determined that
11 DI was the sole component "reasonably
12 likely to possess responsive records"
13 and directed DI to conduct "all
14 appropriate record searches."

15

16 30. DI responded by conducting a
17 search of its automated records system.

18

19 31. When this search proved
20 unproductive, OTI was directed by the
21 office of the DI Information Review
22 Officer (DI/IRO), the official who
23 "task[s] and coordinate[s] record
24 searches within the DI," to conduct a
25 separate search for records.

26

27 32. This search was a manual search of
28 "office and individual analyst files,

28. Plaintiff agrees that this is
undisputed.

29. Plaintiff agrees that this is
undisputed.

30. Plaintiff agrees that this is
undisputed.

31. Plaintiff agrees that this is
undisputed.

32. Plaintiff agrees that this is
undisputed.

1 including local databases, e-mail, and
2 desk files" for "information on the
3 TWA-800 project as a whole."

4

5 33. Conducted "[u]nder the direction of
6 a senior OTI weapons analyst (who was
7 one of the principle analysts on the
8 TWA-800 team)," this search resulted in
9 the assembly of a group of records
10 dealing with the "TWA-800 project."

11

12 34. These records were forwarded to
13 the office of the DI/IRO, where they
14 were searched manually for responsive
15 material.

16

17 35. The records were searched a second
18 time after reviews of the records for
19 purposes of their possible release
20 production information indicating that a
21 second search was warranted.

22

23 36. The CIA did not search for records
24 responsive to the sub-requests into
25 which plaintiff had broken his requests.

26

27 37. Most of the sub-requests were
28 unintelligible, did not describe records

33. Plaintiff agrees that this is
undisputed.

34. Plaintiff agrees that this is
undisputed.

35. Plaintiff agrees that this is
undisputed.

36. Plaintiff agrees that this is
undisputed.

37. Plaintiff denies that this is
undisputed. The request "reasonably

1 in terms that were meaningful to the
2 CIA, or sought records that could only
3 be found at the NTSB, if there. [Bur.
4 Decl. n. 5]

describes" the records sought under 5
U.S.C. § 552 (a)(3)(A)(i). [See FOIA
request in Defendant's *Notice of Filing*
and Vaughn Index p. 75 "These requests
are to be read as to be made both
categorically and specifically."] [And
see **3 Schulze Aff.** Bates 106-110 § IV.
Chart: Summary of FOIA requests and
deficiencies]

10
11 38. Accordingly, the CIA focused on
12 plaintiff's overarching request for "all
13 records upon which [the] publicly
14 released aircraft flight path climb
15 conclusion was based," as explicated by
16 the sub-requests.

17
18 39. The above searches resulted in the
19 identification of approximately 100
20 responsive records." [Bur. Decl. ¶ 25]

21
22 40. Each record was reviewed to
23 determine "what information, if any,
24 could be released to [p]laintiff."

25
26 41. Thirty-two of the records had been
27 created by agencies other than the CIA.

38. Plaintiff agrees that this is
undisputed. [**3 Schulze Aff** Bates 49 ¶
19: "[T]he CIA stated "nearly 100
documents" were in effect found to be
only 41 contextual documents."]

39. Plaintiff denies that this is
undisputed. Defendant's June 20, 2005
index identifies 28 records and its
August 16 index identifies two records.

40. Plaintiff agrees that this is
undisputed.

41. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly

1 [Bur. Decl. ¶ 25]

2 respond to this alleged "fact" until the
3 CIA in good faith files a decipherable
4 Vaughn index and identifies the records
5 to which it refers. [3 Schulze Aff Bates
6 51 ¶ 24: "On August 16 the CIA
7 redundantly re-filed some of the
8 previously submitted records along with
9 two totally new documents and a
10 Vaughn Index Chart, which is reprinted
11 below – after CIA typo errors
12 correction. From that chart it was
13 theoretically possible to identify which
14 justifications for withholdings in the 24
15 *Document Disposition Index* pages. But
16 it was not possible to entirely correlate
17 the CIA's index with the records
18 produced because the CIA...] [Id.]
19 Bates 107 ¶ 85: Characterizing
20 production as "CIA's Rubik Cube
21 Format of Submitted Records." [Id.]
22 Bates 48 ¶ 19: "(2) Multi-page
23 documents do not contain any page
24 numbers, (3) MORI numbers have
25 frequently been assigned in reverse
26 chronological order... (6) The latest
27 DOCUMENT INDEX, JUN 20, 2005,
28 does not include all previously
submitted MORI numbers."] [Id.] Bates

1 50 ¶ 22: "Multiple different records
2 contained the same MORI Nos., and in
3 some cases the same record content was
4 spread out in pages with different MORI
5 Nos."] [Id. Bates 55-65 ¶¶ 30-39:
6 Identifying ten records that are nowhere
7 identified in CIA Vaughn index; 27
8 different MORI DocID numbers.] [Id.
9 Bates 53 ¶ 30; Bates 59 ¶ 34; Bates 66 ¶
10 41: Identifying multiple MORI DocID
11 numbers in single record] [Id. Bates 67
12 ¶ 43; Bates 69 ¶ 45; Bates 72 ¶ 46;
13 Bates 74 ¶ 48; Bates 77 ¶ 55; Bates 82 ¶
14 56; Bates 83 ¶ 57; Bates 84 ¶ 58; Bates
15 84 ¶ 59; Bates 86 ¶ 60; Bates 69 ¶ 45:
16 Listing a single MORI DocID number
17 in multiple records] [Id. Bates 87 ¶ 61;
18 Bates 88 ¶ 62: Record identified in
19 Vaughn index but not produced in
20 August 16, 2005 production] [Id. Bates
21 52 ¶ 24(C): "Omitted from August 16
22 production: Records which the CIA
23 produced in February."] [Id. Bates 53 ¶
24 29(3): "A Doc. with MORI number
25 1147400 listed in the CIA Tab A
26 paragraph appears to have been "Denied
27 in Full" without supportive entry into
28 the Vaughn Index list."] [Id. ¶ 30:

1 "These document records have been
2 redacted by removing an unknown
3 number of important pages which
4 thereby requires that this record/s be
5 listed in the Vaughn Index."] [Id. Bates
6 64 ¶ 39: "Without page numbers it is
7 impossible to determine the exact
8 number of missing pages"] [Id. Bates
9 103 ¶ 76: "Based on textual
10 discontinuity and the lack of page
11 numbers, there are an unknown number
12 of missing pages from this document."]
13 Id. Bates 107 ¶ 85(a): "The CIA
14 August chart purports to identify 26
15 records, numbered 41 through 70 (24
16 records), supposedly the records already
17 produced, and the last two, numbered 16
18 and 17, for the two sets of additional
19 records produced. The chart is
20 incomplete, misleading, and had to be
21 deciphered." (Compare 2nd Bur. Decl.
22 ¶ 8: "A true and correct copy of the
23 records withheld in part, as released to
24 plaintiff, is attached hereto as Exhibit A.
25 For purposes of clarity...")

26 42. These records were referred to their 42. Plaintiff agrees that this is
27 agencies of origin for review and direct undisputed.
28

1 response to plaintiff.
2

3 43. These records that had been created
4 by the CIA were reviewed by the CIA
5 on a line-by-line basis.

6 7 44. Certain of these records contained
8 information obtained from other
9 agencies.

10 11 45. In a process known as
12 "coordination," this information was
13 forwarded to those agencies for review
14 and response to the CIA.

15 16 46. Except for six records that have
17 been withheld pending the completion
18 of coordination, the review of the
19 records created by the CIA has resulted
20 in the release of all "reasonably
21 segregable, non-exempt" material. [Bur.
22 Decl. ¶ 7 & n. 3] [2nd Bur. Decl. ¶ 18]

23 24 43. Plaintiff agrees that this is
25 undisputed.

26 27 44. Plaintiff agrees that this is
28 undisputed.

45. Plaintiff agrees that this is
undisputed.

46. Plaintiff denies that this is
undisputed. Plaintiff denies that this is
undisputed. [3 Schulze Aff Bates 106 ¶
84: "These six documents contain 66
pages... These estimated 15,000 to
20,000 words are being withheld most
likely because they are the critical
evidentiary components which, if
released to the public, would provide a
sturdy foundation for citizen destruction
and ridicule of the CIA TWA FL 800
work product."

1 47. Including two records referred to
2 the CIA by the NTSB, and one record
3 returned to the CIA after being referred
4 to the FBI, the CIA has withheld 26
5 records in part and six in their entirety.
6 [Bur. Decl. ¶¶ 7, 12, 14, 25] [2nd Bur.
7 Decl. ¶¶ 7, 18]

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47. Plaintiff denies that this is undisputed. Plaintiff cannot possibly respond to this alleged "fact" until the CIA in good faith files a decipherable Vaughn index and identifies the records to which it refers. [3 Schulze Aff Bates 107 ¶ 85(a): "The CIA August chart purports to identify... supposedly the records already produced... [and] two sets of additional records produced. The chart is incomplete, misleading, and had to be deciphered."] See response to paragraph 41 above, reciting that the CIA produced records without corresponding Document ID numbers, assigned MORI Doc ID numbers in reverse chronological order, produced at least 10 records not listed on its Vaughn index, identified records in its Vaughn index not produced in its August 16 filing, apparently denied in full a record not listed in its Vaughn index, removed pages from records, produced two records with multiple MORI Doc ID numbers, and produced 11 sets of records with duplicate MORI Doc ID numbers.

- 1 48. The record returned to the CIA after
2 being referred to the FBI is a record
3 analyzing statements of eyewitnesses.
- 4
- 5 49. In withholding records of portions
6 of records, the CIA has relied on FOIA
7 Exemptions 3, 4, 5, 7(C), and 6.
- 8
- 9 50. Except for the records withheld in
10 their entirety, most of the withholdings
11 have been minimal.
- 12
- 13 51. The CIA has relied on
14 FOIA Exemption 3, 5 U.S.C. § 552
15 (b)(3), and 50 U.S.C. 403g to withhold
16 the names of CIA employees; the
17 acronym of a CIA component; and an
18 intelligence method not involved in that
19 portion of the CIA's analysis relating to
20 the "publicly released aircraft flight path
21 climb conclusion." [Bur. Decl. ¶¶ 26-
22 27, 31 & DI at 41, 44-48, 50-53, 54, 58,
23 60-62, 64-66, 68-70] [2nd Bur. Decl. ¶¶
24 10-12 & DI at 16] [2nd Bur. Decl. ¶¶
25 10-12 & DI at 16.]
- 26
- 27
- 28
48. Plaintiff agrees that this is
undisputed.
49. Plaintiff agrees that this is
undisputed.
50. Plaintiff agrees that of the records
produced, the volume of the
withholdings have been minimal.
49. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the
CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in

1 reverse chronological order, produced at
2 least 10 records not listed on its Vaughn
3 index, identified records in its Vaughn
4 index not produced in its August 16
5 filing, apparently denied in full a record
6 not listed in its Vaughn index, removed
7 pages from records, produced two
8 records with multiple MORI Doc ID
9 numbers, and produced 11 sets of
10 records with duplicate MORI Doc ID
11 numbers.
12

13 52. None of the records, responsive to
14 plaintiff's FOIA request, from which the
15 names of CIA personnel have been
16 withheld has been released to the public
17 previously.

18
19 53. Even assuming, *arguendo*, that the
20 name identified in Bill Gertz & Rowan
21 Scarborough, *Inside the Ring*, Wash.
22 Times, Dec. 5, 2003, at A6, is a name
23 that the CIA is withholding in this case,
24 the association of that name with the
25 information contained in the records
26 responsive to plaintiff's request has not
27 been officially acknowledged. [2nd
28 Bur. Decl. ¶ 9]

52. Plaintiff agrees that this is
undisputed.

53. Plaintiff denies that this is
undisputed. [1 Lahr Aff Bates 31]:
(Wash. Times article): Reciting the
"Randolph M. Tauss... won an
intelligence medal for his work on the
crash." The withheld information
contained in the records, the name
Randolph M. Tauss, has been "officially
acknowledged."

1
2 54. The CIA has relied on FOIA
3 Exemption 4, 5 U.S.C. § 552(b)(4), to
4 withhold certain information concerning
5 the "baseline mass properties,
6 aerodynamic and engine characteristics
7 of the Boeing Model 747-100 aircraft."

8
9 55. Provided to the government
10 voluntarily by Boeing, this information
11 is part of the training simulator database
12 that Boeing has developed for Boeing
13 747-100's, 200's, and 300's (747
14 Classics).

15
16 56. Information in this database used
17 for various purposes by Boeing and its
18 licensees, "including flight training,
19 aircraft certification, and engineering."

20
21 57. "In providing these services, Boeing
22 competes with other companies and
23 enjoys a competitive advantage because
24 it is the sole source of the training
25 simulator data." [Breuhaus Decl. ¶ 18]

26
27 54. Plaintiff agrees that this is
28 undisputed.

55. Plaintiff agrees that this is
undisputed.

56. Plaintiff agrees that this is
undisputed.

57. Plaintiff denies that this is
undisputed. [2 Hoffstadt Aff. Bates
37 ¶¶ 26, 28: "The fact that Boeing has
consented to the public sale of a CFD
model of a 747 Classic aircraft directly
contradicts this claim since this same
information can be obtained from the
CFD model with a high degree of

precision.... In fact it is safe to say that the baseline lift coefficient of the 747 Classic has already been reproduced numerous times by engineers using this CFD model and software."] [Id. Bates 39 ¶ 41: "Given the numerous facts listed in Paragraph 40 above, a potential competitor would immediately recognize the futility of pursuing more revenue by creating a 747 Classic simulation training facility. Add to these obstacles is the fact that Boeing would maintain its status as the recognized and established authority and preferred provider for these services due to its position as the original developer and manufacturer of the aircraft in question." [X Lahr Aff. Bates 375-378 Ex. 13 (Boeing 747 series): Recounting that Boeing placed the 747-100 in service in 1969, 37 years ago, and has been succeeded by the 747-200 in 1983, the 747-300 in 1989, and the 777 in 1995.

58. A competitor wishing to "reproduce Boeing's data and sell its own version of Boeing's 747 Classic simulator data

58. Plaintiff agrees that this is undisputed.

1 package would need to make an
2 investment in the order of the magnitude
3 of \$20 million in development costs."

4 [Breuhaus Decl. ¶ 15]

5
6 59. Free access to the withheld
7 information "would substantially assist
8 in this effort." [Breuhaus Decl. ¶ 15]

9
10 59. Plaintiff denies that this is
11 undisputed. [2 Hoffstadt Aff. Bates 32
12 ¶ 4: "A computational fluid dynamics
13 (CFD) computer software program is a
14 common tool..."] [Id. Bates 33 ¶ 6:
15 "[CDF is widely used in the aerospace
16 field..."] [Id. Bates 34 ¶ 10: "The fact
17 that a CFD model of the 747 Classic is
18 available to the public makes it certain
19 that any aerodynamic data about this
20 configuration could be obtained
21 independently from Boeing, with a very
22 high degree of precision."] [X Lahr
23 Aff. Bates 282 ¶ 93: "[O]peration and
24 performance information is not
25 legitimately proprietary."] [X Lahr Aff.
26 Bates 271 ¶ 39: "Performance data of
27 the B747-100 is already in the public
28 domain."] [X Lahr Aff. Bates 285 ¶
122: "Aviation has progressed so far and
so fast since the B747-100 was on the
drawing board that it is hard to imagine
that Boeing would be hurt competitively

1 if the above information were
2 disclosed."
3

4 60. As a further matter, the CIA has
5 relied on Exemption 4 to withhold the
6 name of, and contact information for, an
7 employee of Boeing.

8
9 61. Disclosure of this material would
10 make it easier for competitors of Boeing
11 to solicit the unauthorized disclosure of
12 the technical information concerning the
13 Boeing 747-100 that the CIA has
14 withheld. [Breuhaus Decl. ¶ 15] [See
15 Bur. Decl.]

16
17 62. The CIA has relied on the
18 deliberative process privilege and FOIA
19 Exemption 5, 5 U.S.C. 552(b)(5) to
20 withhold certain materials created as a
21 part of the analysis that continued after
22 the CIA video concerning the explosion
23 of TWA Flight 800 was shown to the
24 public.

25
26 63. One of the withholdings described
27 in ¶ 62 is an excerpt from six pages of
28 "analyst notes" dated December 2-4,

60. Plaintiff agrees that this is
undisputed.

61. Plaintiff agrees that this is
undisputed.

62. Plaintiff agrees that this is
undisputed.

63. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 1997; these notes "includ[e]
2 mathematical calculations and reflect[]
3 daily work and consultations with other
4 analysts, regarding aerodynamics."
5 [Bur. Decl. DI at 44, 56-58] [2nd Bur.
6 Decl. ¶ 11, 17]

7
8
9
10 CIA in good faith files a decipherable
11 Vaughn index and identifies the records
12 to which it refers. [3 Schulze Aff Bates
13 107 ¶ 85(a): "The CIA August chart
14 purports to identify... supposedly the
15 records already produced... [and] two
16 sets of additional records produced. The
17 chart is incomplete, misleading, and had
18 to be deciphered."] See response to
19 paragraph 41 above, reciting that the
20 CIA produced records without
21 corresponding Document ID numbers,
22 assigned MORI Doc ID numbers in
23 reverse chronological order, produced at
24 least 10 records not listed on its Vaughn
25 index, identified records in its Vaughn
26 index not produced in its August 16
27 filing, apparently denied in full a record
28 not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

26 64. A second of the withholdings
27 described in ¶ 62 is the entirety of an
28 18-page draft report, dated March 3,

64. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 1998, captioned "Dynamic Flight
2 Simulation"; this report contains
3 "analysis and preliminary conclusions
4 regarding further assessment of TWA
5 Flight 800." [Bur. Decl.] [DI at 57]

6
7
8
9 CIA in good faith files a decipherable
10 Vaughn index and identifies the records
11 to which it refers. [3 Schulze Aff Bates
12 107 ¶ 85(a): "The CIA August chart
13 purports to identify... supposedly the
14 records already produced... [and] two
15 sets of additional records produced. The
16 chart is incomplete, misleading, and had
17 to be deciphered."] See response to
18 paragraph 41 above, reciting that the
19 CIA produced records without
20 corresponding Document ID numbers,
21 assigned MORI Doc ID numbers in
22 reverse chronological order, produced at
23 least 10 records not listed on its Vaughn
24 index, identified records in its Vaughn
25 index not produced in its August 16
26 filing, apparently denied in full a record
27 not listed in its Vaughn index, removed
28 pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

26 65. A third of the withholdings
27 described in 62 is the entirely of a 17-
28 page draft report, dated March 17, 1998,

65. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 captioned "Analysis of Radar Tracking
2 of the TWA 800 Disaster on July 17,
3 1996. [Bur. Decl.] [DI at 56]

4
5
6
7
8
9
10 CIA in good faith files a decipherable
11 Vaughn index and identifies the records
12 to which it refers. [3 Schulze Aff Bates
13 107 ¶ 85(a): "The CIA August chart
14 purports to identify... supposedly the
15 records already produced... [and] two
16 sets of additional records produced. The
17 chart is incomplete, misleading, and had
18 to be deciphered."] See response to
19 paragraph 41 above, reciting that the
20 CIA produced records without
21 corresponding Document ID numbers,
22 assigned MORI Doc ID numbers in
23 reverse chronological order, produced at
24 least 10 records not listed on its Vaughn
25 index, identified records in its Vaughn
26 index not produced in its August 16
27 filing, apparently denied in full a record
28 not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

26 66. The fourth withholding described in
27 ¶ 62 is the entirety of 22 pages of charts
28 and graphs; prepared by one or more

66. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 CIA analysts, these materials contain
2 "intra-agency and inter agency
3 deliberations with NTSB, including
4 [the] analyst's selection of variables,
5 assumptions, calculations, and graphical
6 representations regarding [the] analyst's
7 preliminary analysis of radar tracking
8 data provided by the NTSB." [Bur.
9 Decl.] [DI at 58] [2nd Bur. Decl. ¶ 17]

10
11 CIA in good faith files a decipherable
12 Vaughn index and identifies the records
13 to which it refers. [3 Schulze Aff Bates
14 107 ¶ 85(a): "The CIA August chart
15 purports to identify... supposedly the
16 records already produced... [and] two
17 sets of additional records produced. The
18 chart is incomplete, misleading, and had
19 to be deciphered."] See response to
20 paragraph 41 above, reciting that the
21 CIA produced records without
22 corresponding Document ID numbers,
23 assigned MORI Doc ID numbers in
24 reverse chronological order, produced at
25 least 10 records not listed on its Vaughn
26 index, identified records in its Vaughn
27 index not produced in its August 16
28 filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

26 67. The CIA has also relied on the
27 deliberative process privilege and
28 Exemption 5 to withhold certain

67. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 materials reflecting the give-and-take
2 between the CIA and other agencies.
3 [Bur. Decl.] [DI at 59] [2nd Bur. Decl.
4 ¶ 16]

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

25
26 68. One of the withholdings described
27 in ¶ 67, is the entirety of an undated
28 five-page draft, with handwritten

68. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 annotations, captioned "Response to
2 Allegations of SA [Special Agent]
3 Regarding CIA Analysis"; this draft
4 "reflect[s] candid discussion and
5 opinions of individuals both within and
6 between FBI and CIA regarding CIA
7 analysis of eyewitness reports." [Bur.
8 Decl.] [DI at 59]

9
10
11 CIA in good faith files a decipherable
12 Vaughn index and identifies the records
13 to which it refers. [3 Schulze Aff Bates
14 107 ¶ 85(a): "The CIA August chart
15 purports to identify... supposedly the
16 records already produced... [and] two
17 sets of additional records produced. The
18 chart is incomplete, misleading, and had
19 to be deciphered."] See response to
20 paragraph 41 above, reciting that the
21 CIA produced records without
22 corresponding Document ID numbers,
23 assigned MORI Doc ID numbers in
24 reverse chronological order, produced at
25 least 10 records not listed on its Vaughn
26 index, identified records in its Vaughn
27 index not produced in its August 16
28 filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

29
30 69. The other withholding described in
31 ¶ 67 is the entirety of three pages of
32 handwritten analyst notes containing
33

34
35 69. Plaintiff denies that this is
36 undisputed. Plaintiff cannot possibly
37 respond to this alleged "fact" until the
38

1 "intra-agency and inter-agency
2 deliberations with NTSB, including the
3 analyst's preliminary assessment,
4 comments, and notations regarding
5 select radar tracking data provided by
6 NTSB.

7
8
9
10 CIA in good faith files a decipherable
11 Vaughn index and identifies the records
12 to which it refers. [3 Schulze Aff Bates
13 107 ¶ 85(a): "The CIA August chart
14 purports to identify... supposedly the
15 records already produced... [and] two
16 sets of additional records produced. The
17 chart is incomplete, misleading, and had
18 to be deciphered."] See response to
19 paragraph 41 above, reciting that the
20 CIA produced records without
21 corresponding Document ID numbers,
22 assigned MORI Doc ID numbers in
23 reverse chronological order, produced at
24 least 10 records not listed on its Vaughn
25 index, identified records in its Vaughn
26 index not produced in its August 16
27 filing, apparently denied in full a record
28 not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

29
30 70. The CIA has relied on exemption
31 7(C) to withhold, at the request of the
32 FBI, the names and initials of

33
34 70. Plaintiff denies that this is
35 undisputed. Plaintiff cannot possibly
36 respond to this alleged "fact" until the

1 eyewitnesses to the explosion of TWA
2 Flight 800; the names of special agents
3 and other employees of the FBI; and
4 contact information for certain such
5 individuals; this material comes from
6 records created as part of the criminal
7 investigation that the FBI conducted
8 into the explosion of TWA Flight 800,
9 including that portion of the
10 investigation with which the CIA
11 assisted. [Bur. Decl. ¶ 51 & DI at 43-
12 44, 49, 51, 53, 55-56, 64-65, 67-68, 70]
13 [2nd Bur. Decl. ¶ 15 & DI at 16-17]

14
15 CIA in good faith files a decipherable
16 Vaughn index and identifies the records
17 to which it refers. [3 Schulze Aff Bates
18 107 ¶ 85(a): "The CIA August chart
19 purports to identify... supposedly the
20 records already produced... [and] two
21 sets of additional records produced. The
22 chart is incomplete, misleading, and had
23 to be deciphered."] See response to
24 paragraph 41 above, reciting that the
25 CIA produced records without
26 corresponding Document ID numbers,
27 assigned MORI Doc ID numbers in
28 reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

29
30 71. The CIA has relied on FOIA
31 Exemption 6, 5 U.S.C. § 552(b)(6), to
32 withhold the names and initials of

33
34 71. Plaintiff denies that this is
35 undisputed. Plaintiff cannot possibly
36 respond to this alleged "fact" until the

1 eyewitnesses to the explosion of TWA
2 Flight 800; the names of employees of
3 the NTSB, CIA, FBI, Boeing, and other
4 private companies; and contact
5 information for certain of these
6 individuals. [Bur. Decl. DI at 42-45,
7 47-49, 51, 53-56, 64-68, 70] [2nd Bur.
8 Decl. ¶¶ 12-14 & DI at 16-17]

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CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

26 72. Most of the information withheld
27 pursuant to FOIA exemption 6 has also
28 been withheld pursuant to Exemptions

72. Plaintiff agrees that this is
undisputed.

¹ 3, 4, or 7(C).

²

³ 73. The individuals to whom the
⁴ information pertains "have a privacy
⁵ interest in not being subject to unofficial
⁶ questioning about the analytic project or
⁷ investigation at issue and in avoiding
⁸ annoyance or harassment in their
⁹ official, business, and private lives."

¹⁰

¹¹ 73. Plaintiff agrees that this is
¹² undisputed.

¹³

¹⁴ Plaintiff also contends that the following other material facts are in dispute:

¹⁵ 74. The government misrepresented the
¹⁶ evidence.

¹⁷ 74. [K Sanders Aff. Bates 177 ¶ 15
¹⁸ (quoting Nov. 1996 FBI SAIC James
¹⁹ Kallstrom interview with Jim Lehrer):
²⁰ "We think it was a meteorite shower,
²¹ Jim." [K Sanders Aff. Bates 181-82 Ex
²² 2 (Affidavit of NASA chemist C. W.
²³ Basset): "The tests performed by me at
²⁴ NASA-KSC on samples Dr. Birk said
²⁵ were from... [the] cabin interior did not
²⁶ address the issue of origin of any
²⁷ reddish-orange residue..."] [X Lahr
²⁸ Aff. Bates 380 Ex 14 (Transcript of
August 22-23, 2000, NTSB Sunshine
Hearing): "Jim Hall: However, even
though our employees are not law

1 enforcement personnel, they examined
2 every piece of wreckage for any
3 physical evidence that the crash of
4 Flight 800 had been caused by a bomb
5 or missile. Had we found such
6 evidence, we would have immediately
7 referred the matter back to the
8 appropriate law enforcement agencies
9 for their action. Let me state
10 unequivocally, the Safety Board has
11 found no evidence....] [Id. Bates 381:
12 "Bernard Loeb: No. In fact, as the
13 chairman put up earlier on the slide,
14 there were a great number of outside
15 organizations that participated in the
16 explosives end of it. A large number of
17 different organizations, within the
18 government and outside the
19 government, who looked at the metal all
20 came to the same conclusion that there
21 was no physical evidence of a bomb or a
22 missile warhead exploding."] [Id. Bates
23 385: "David Mayer: Well, the first
24 witness listed in the advertisement
25 (compare R Wire Aff) is the witness on
26 the bridge when he saw the accident.
27 This is the witness I described earlier in
28 my presentation, and I told you that his

1 account was consistent with the motion
2 of the airplane and the crippled flight."]
3 [Id.: "The second witness (compare P
4 Brumley Aff) in the ad was the witness
5 who was on US Air Flight 217 and I
6 explained to you that he couldn't have
7 seen a missile hit TWA Flight 800
8 because the timing just simple doesn't
9 work out."] [Id.: "The fourth witness
10 (compare S Angelides Aff) listed in the
11 advertisement said he saw, or in the
12 advertisement it says he saw the
13 accident from the deck of his house ...
14 seeing a glowing red object pick up
15 speed and streak out to sea ... then he
16 saw a series of flashes and a fireball
17 according to the ad. However, July 21,
18 1996 when the interview[ee] was
19 interviewed, his FBI document says he
20 saw a red flare descending and makes
21 no mention of some of the other details.
22 In fact, he's the first witness I used as an
23 example in my presentation."] [Id.:
24 "The fifth witness (compare O Meyer
25 Aff) who's mentioned in the
26 advertisement is the pilot of the
27 National Guard helicopter who,
28 obviously, I already described that

mistook/studied? the radar data and calculated the time for his departure from the accident site to the rescue field. Be said he'd seen a fireball and the breakup sequence of the airplane, not a missile."]

75. The government withheld evidence during the probe.

75. [C Hill Aff. Bates 47: FBI SAIC James Kallstrom claimed criminal investigation in "pending inactive status" as reason to continue to withhold eyewitness FBI 302s from NTSB Witness group.] [C Hill Aff. Bates 46 ¶ 1: (quoting Commander William S. Donaldson): "[T]he NTSB assisted the Justice Department in hiding a witness who claims to have seen a missile strike the aircraft on the forward wall of the number two main tank."] [L Speer Aff. Bates 184 ¶ 15: "And the FBI said all right, all right, we'll send it to our real lab in Washington and that was a Sunday, Monday, after the accident, four or five days later, and the part has not been seen since, for five years now."] [U Perry Aff. Bates 253 ¶ 50: "He [FBI agent] said they decided that I was too far away, that I couldn't have

1 seen what I had seen. I said, 'But then
2 how did I tell you, what, how did I
3 describe to you how the plane had
4 broken up before they had even pulled it
5 out of the water?'''"] X Lahr Aff. Bates
6 273 ¶¶ 52-54: "The party process was
7 violated again with respect to the
8 Witness Group. In the case of TWA-
9 800, twenty-two groups were formed
10 including a Witness Group. However,
11 the FBI immediately blocked the
12 Witness Group from its function of
13 interviewing witnesses, and it was
14 disbanded. Later the Witness Group
15 was reformed to study the FBI FD-
16 302s... Thus, the Witness Group never
17 did interview any of the hundreds of
18 ground eyewitnesses. The Witness
19 Group never even knew who they
20 were.... [I]t was more than two years
21 after the accident before the Witness
22 Group interviewed Captain David
23 McClaine. [Only civilian eyewitness
24 interviewed by NTSB.] Never before in
25 my experience with NTSB accident
26 investigations have I seen the NTSB
27 refuse to conduct Witness Group
28 interviews of key eyewitnesses,

1 especially when the eyewitness
2 testimony was pivotal...] [X Lahr Aff.
3 Bates 309 Ex 2 (Dec 3, 1997 letter from
4 FBI SAIC James Kallstrom to NTSB
5 Chairman Hall): "[W]e particularly
6 object to discussion of the residue
7 examination [at the public hearing."])
8 [Y Young Aff. Bates 394 ¶ 2(f): "The
9 non-governmental parties did not have
10 access to the FBI Witness Summaries,
11 which formed a significant foundation
12 for the CIA simulation, until the middle
13 of 1998. This was well after both
14 simulations had been completed and
15 were in the public domain."]
16

17 76. The government altered and
18 removed evidence from the
19 reconstruction hanger.
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76. [Lodging – Expert Eyewitnesses –
Congressional testimony of NTSB
investigator Hank Hughes: relating FBI
agents surreptitiously in hanger at 3:00
a.m. on a Saturday] [X Lahr Aff. Bates
370 ¶ 1 Ex 10 (April, 2000,
*International Association of Machinists
and Aerospace Workers* submission to
NTSB final Report): "During the
investigation of TWA flight 800 cabin
wreckage began to disappear from the
cabin wreckage hanger. Indications

1 were that the disappearance was due to
2 the removal of wreckage by the FBI.
3 Field notes from the Cabin
4 Documentation Group (CDG) stated this
5 fact.]
6

7 77. The government banned eyewitness
8 testimony from its two public hearings.
9

10 77. C Hill Aff. Bates 46: "The
11 hundreds of eyewitnesses who saw a
12 streak of light intersect with the aircraft
13 were banned, along with any
14 discussion" of their accounts.] [X
15 Lahr Aff. Bates 307 Ex 2 (Dec 3, 1997
16 letter from FBI SAIC James Kallstrom
17 to NTSB Chairman Hall): "[T]he FBI
18 objects to the use of the CIA video...
19 The FBI also objects... to include in the
20 public docket [any witness materials]...
21 and to calling any eyewitnesses to
22 testify at the public hearing.]
23

24 78. The government altered evidence.
25

26 78. K Sanders Aff. Bates 178 ¶¶ 9-
27 10: ["Know piece bent down...
28 [b]ecause I have the photos of these
large pieces of the floor of the center
wing tank shortly after they were
brought into the hangar. They don't
have that bend in them.... [T]hey
couldn't live with that, because you
-43-

1 must have an external force coming into
2 the airplane blowing it upwards and in.
3 Now that's not mechanical, that's
4 something from outside. So they cut off
5 the upward bending metal, its huge...
6 mashed it down, so that instead of
7 having been blow upwards, it was
8 mashed down, because a mechanical
9 would have blown that same piece down
10 instead of up."] [1 Lahr Aff. Bates 30 ¶
11 5: (Congressional testimony of NTSB
12 investigator Hank Hughes): "I actually
13 found this man with a hammer pounding
14 on a piece of evidence trying to flatten it
15 out."]

16
17 79. The government knew that the
18 center wing fuel tank was empty.

19
20 79. [C Hill Aff. Bates 50 ¶ 4:
21 "Captain Mundo... used that sump
22 pump to take out tiny residual jet fuel
23 and any water that's present, as there
24 always is... why they have the sump
25 pumps. And then they took off, three
26 hours later. Because instead of going as
27 far as Athens, they weren't going to
28 Paris... they didn't need it.
Consequently, we know that tank was
empty. Well, that means that it had a
thimble-full of kerosene, or the

1 equivalent, of vapor. This is a huge
2 tank, much bigger than this room,
3 literally. And there's no way that you
4 can ignite a thimble-full of kerosene and
5 blow off the left wing of the strongest
6 airplane ever built."

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8 80. The government knew that there
9 was no spark in the center wing fuel
10 tank.

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12 80. [D Donaldson Aff. Bates 70
13 (quoting Commander William S.
14 Donaldson): "[T]he wiring and motor
15 for this pump are outside the tank....
16 [W]here this pump was mounted [] they
17 found it clean and without any signs of
18 metal failure."] [X Lahr Aff. Bates
19 366 ¶¶ 1-3 Ex 10 (April, 2000,
20 *International Association of Machinists*
21 and *Aerospace Workers* submission to
22 NTSB final Report): "We conclude that
23 the existing wiring recovered from flight
24 800 wreckage does not exhibit any
25 evidence of improper maintenance or
26 any malfunction that lead to a spark or
27 other discrepancy. Examination
28 indicates that the wiring was airworthy
and safe for flight.... No evidence of
improper, poor, or incomplete
maintenance was found m the wreckage
of the accident aircraft."]

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6 81. The defendant knew that the center
7 wing fuel tank explosion theory is
8 impossible due to the low volatility of
9 the fuel.

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25 82. The government knew that the
26 center wing tank (CWT) explosion
27 followed by a zoom-climb is impossible
28 due to the fact that the CWT spar

81. [H Harrison Aff. Bates , ¶ 1, 3-4, 7 & 9: [A]viation fuel having a flash point greater than 100 degrees F would be properly classified as a combustible liquid and NOT a flammable liquid.... [A] combustible liquid is one that will NOT give off flammable vapors in sufficient quantity to allow combustion and/or an explosion at ambient temperatures. [A]s an airplane gains altitude, the ambient temperature drops. [T]oday cars have fuel pumps inside their gas [flammable] tanks... [A] fuel tank carrying a combustible liquid is, by scientific definition, not capable an internal fire or explosion because there simply cannot be the presence of flammable vapors therein."]

82. [W Rivero Aff. Bates 264 ¶ 13: "As the accompanying animation illustrates, the initiating event in the Center Wing Tank results in the

1 supports the wings.
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4 83. Defendant's zoom-climb hypothesis
5 was knowingly impossible because
6 engine thrust was cut with the loss of
7 the nose.

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9 84. Defendant's zoom-climb hypothesis
10 was knowingly impossible because the
11 wing(s) were initially separated from the
12 aircraft.

1 destruction of the Front Spar of the
2 Wing Box, collapsing the wings."]

3
4 83. [V Pence Aff. Bates 259 ¶ 6: "In
5 the TWA 800 case, the moment the
6 explosion occurred, and the nose section
7 was severed, there would have been no
8 more engine thrust."]

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10 84. [B Hambley Aff. Bates 40: Upon
11 initiating event "the aircraft structure
12 supporting and supported by the
13 wings... was destroyed so severely"]
14 [C Hill Aff. Bates 43, ¶ 12: "[A]lready
15 lost one of its wings"] [E Stalcup Aff.
16 Bates 120 ¶ 9: "Debris field data
17 indicates that Flight 800's left wing was
18 damages early in the crash sequence...
19 wing structure... found in an area
20 consistent with it separating from the
21 aircraft within five seconds of the initial
22 explosion] [T McClaine Aff. Bates
23 236: "I didn't see it pitch up, no.
24 Everything ended right there at that
25 explosion... I saw the wings blow off."] [U Perry Aff. Bates 248 ¶ 19: "And
26 then the left wing goes off in this
27 direction."] [Y Young Aff. Bates 393 ¶
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2(a) & (b): "The loss of the nose section
3 caused an immediate and significant aft
4 shift of the aircraft's center of gravity.
5 The aircraft rapidly pitched upward to a
6 high angle causing the ensuing failure of
7 both the left and right wingtips. This
8 was due to excessive positive 'g'
9 forces..."]

10 85. The CIA knew that the zoom-climb
11 is aerodynamically impossible.

10 85. [C Hill Aff. Bates 51 ¶ 4:
11 (quoting Commander William S.
12 Donaldson): "Once it goes beyond
13 about 20 degrees nose up, it can't fly any
14 more because these wings are no longer
15 into the wind they can't produce lift...
16 It's called gravity. This 333 tons are
17 going to stall... when the time the
18 airplane quits flying, [it] is going
19 down."] [V Pence Aff. Bates 259 ¶ 8:
20 "A very abrupt pitch-up would have
21 resulted in an immediate high-speed
22 stall with loss of lift and subsequent loss
23 (not gain) of altitude."] [X Lahr Aff.
24 Bates 274-75 ¶¶ 59, 62: "An aircraft in
25 balanced flight is like a teeter totter. As
26 can be seen in the following diagram,
27 the horizontal stabilizer normally pushes
28 down with a force of a few thousand

1 pounds to keep the aircraft (or teeter-
2 totter) in balance.... If the CG [center
3 of gravity] gets out of those limits, the
4 horizontal stabilizer cannot exert enough
5 force to keep the aircraft in balance, and
6 then there is nothing a pilot can do to
7 keep the aircraft from crashing.... The
8 aircraft stalls at an angle of attack of
9 about 18 degrees... At that rate, TWA
10 would have been stalled in about one
11 and half seconds after nose separation."]
12

13 86. The CIA knew that the aircraft did
14 not slow and so the zoom-climb is
15 impossible.

16 86. [D Donaldson Aff. Bates 62-3 ¶ 68,
17 72: "If the aircraft did a 'zoom climb,'
18 you would expect to see a significant
19 reduction in ground speed (horizontal
20 velocity). This is especially true the
21 more steeply the aircraft climbs. There
22 is no evidence of a significant loss of
23 horizontal speed during this time period.
24 In fact, two of the three radars tracking
25 the flight path show the aircraft
26 speeding up."] [E Stalcup Aff. Bates
27 126 ¶ 3: "The law of conservation of
28 energy says, that you use kinetic energy
and that's the speed you have already
and you convert that to altitude but there
is a price, the price that you pay is that

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- you slow down. It's like when you ride a bike up a hill, at the top of the hill you're going pretty slowly, you know, you use your energy up. Well the radar data shows the plane didn't slow down. If didn't slow down, it didn't climb. If it didn't climb, the witnesses didn't see the plane climb, they saw something else."]
87. The two eyewitnesses featured in the CIA animation repudiate its depiction.
87. [P Brumley Aff. Bates 210 ¶ 1: "It wasn't even close to being an accurate representation of what I saw."] [R Wire Aff. Bates 214 ¶ 4: "It [CIA animation] didn't represent what I had testified to the agent as to what I saw out there."]
88. Eyewitnesses saw projectile(s) traveling at supersonic speed.
88. [C Hill Aff. Bates 51 ¶ 4: (quoting Commander William S. Donaldson): "When you see a streak go up, and go up 13,800 feet, in seconds, 4 or 5, 6, 7 seconds, that's supersonic. Yeah, it's supersonic. Only a fighter aircraft or a missile can achieve those kinds of speeds. And an investigator can pretty quickly determine, as the FBI guys did, that when you're 8 or 10 miles away and you see something go that high that

1 quick, its just a matter of trigonometry.
2 I mean any high school kid can figure it
3 out. It's got to be a missile.]
4

5 89. The airborne eyewitnesses reject the
6 CIA zoom-climb video-animation.

7 89. [N Fuschetti Aff. Bates 191: "We
8 witnessed TWA 800... landing lights to
9 a ball of flames.... At no time did I see
any vertical travel of the aircraft..."]

10 [O Meyer Aff. Bates 192 ¶ 5(b):
11 "When that aircraft was hit, it
12 immediately began falling. It fell like a
stone. It came right out of the sky.
13 From the first explosion, to the second
14 explosion, to the third, possibly fourth
15 and the petrochemical explosion. It was
16 going down, from the first moment of
17 the first explosion, it was going down.
18 It never climbed."] [T McClaine Aff.

19 Bates 235: "The explosion just
20 happened right in front of me there and
21 it disappeared right there, with the two
22 wings coming out the bottom.... it just
23 disappeared right about the same level."

24 Id. Bates 236: "I didn't see it pitch up,
25 no." Id. Bates 236: "And everything
26 went down." Id. Bates 243 (ATC
27 tape): "it just went down – in the water"
28 Id. Bates 244 (ATC tape): "we are

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6 90. Not a single eyewitnesses saw what
7 the CIA video-animation depicts.

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7 91. Eyewitnesses placed a newspaper
8 advertisement "*We saw TWA Flight 800*
9 *Shot Down by Missiles And We Won't be*
10 *Silenced any Longer.*"

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8 92. The CIA knowingly falsely reported
9 that only "21 eyewitnesses" saw stages
10 of the disaster before the fuselage began
11 its descent into the water.

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15 directly over the sight with that airplane
16 or whatever it was just exploded and
17 went into the water"]

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15 90. [S Angelides Aff. Bates 215 ¶ 5:
16 "That [CIA animation] bore no
17 resemblance whatsoever to what I
18 saw... Because if they ask me, it didn't
19 resemble it in any way."] [X Lahr Aff.
20 Bates 277 ¶ 66: "Neither the FBI nor the
21 CIA nor the NTSB has produced a
22 single eyewitness who saw TWA 800
23 zoom-climb upwards out of the initial
24 fireball."]

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28 91. [X Lahr Aff. Bates 327 Ex 7 (Aug
2000 *Washington Times* advertisement):
Featuring accounts of eyewitnesses
Michael Wire, Dwight Brumley,
Richard Goss, Paul Angelides, Major
Frederick Meyer, William Gallagher.]

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28 92. [I Schulze Aff. Bates 46 ¶ 17
(transcript of CIA video-animation):
"The 21 eyewitnesses whose
observations began earlier described
what was almost certainly the aircraft

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itself in various stages of crippled flight
11 after it exploded."] [D Donaldson Aff.
12 Bates 101 Ex 16 NTSB Exhibit 4A
13 Witness Group Factual Report (based on
14 458 of the FBI's 736 302s): "Of the 183
15 [eyewitnesses] who observed a streak of
16 light... 96 said that it originated from
17 the surface."] (Note: NTSB withheld
18 this exhibit from its public docket.)
19

20 93. TWA is among the parties to the
21 probe which rejected the CIA's zoom-
22 climb-animation conclusion.

23 94. The aviation community ridiculed
24 the CIA's zoom-climb animation.

25 93. [Y Young Aff. Bates 393 ¶ 2: "As
26 the TWA Flight 800 Investigation Party
27 Coordinator and Chief Accident
28 Investigator, I can confirm that TWA
did not subscribe to the 'zoom climb'
scenarios of either the CIA or NTSB,
based on the following factual
reasons:"]

29 94. [C Hill Aff. Bates 46: Zoom-
30 climb is "a theory that is openly mocked
31 by senior military aviators, airline
32 captains and outside air crash
33 investigators."] [3 Schulze Aff. Bates
34 45 ¶ 15: "In a survey of 'Aviation Week
35 and Space Technology' readers, the
36 majority did not accept the CIA 1997
37 zoom-climb video as aerodynamically

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95. The airline industry has undertaken no remedial measures to the Center Wing Tank of Boeing 747s since the disaster.

95. [V Pence Aff. Bates 259 ¶ 11: "If there was the slightest chance that this could occur in another aircraft of the same type, the prudent and responsible action would have been to ground.... that portion of the fleet that was of the same series as TWA 800, by means of an Emergency Airworthiness Directive. That didn't happen."]

96. Defendant knew, along with witnesses and investigators, that the center wing tank explosion was not the initiating event.

96. [O Meyer Aff. Bates 192 ¶ 5(a): "And what I saw explode in the sky was definitely military ordnance. I have enough experience with it to know what it looks like. And I saw one, two, three, four explosions before I saw the fireball. So, the fuel in this aircraft eventually exploded. But the explosion of the fuel was the last event, not the initiating event. The initiating event was a high-velocity explosion, not fuel. It was ordnance."] [X Lahr Aff. Bates 371 ¶ 1 Ex 10 (April, 2000, *International Association of Machinists and*

Aerospace Workers submission to NTSB final Report): "The center wing tank did explode! We find that its explosion was as the result of the aircraft breakup. The initial event caused a structural failure in the area of Flight Station 854 to 860, lower left side of the aircraft. A high-pressure event breached the fuselage and the fuselage unzipped due to the event. The explosion was a result of this event!"

97. Explosive residue was recovered from the debris.

98. The government concealed the existence of the missile debris field.

97. [E Stalcup Aff. Bates 126 ¶ 6:
PETN & RDX recovered from debris.]

98. [D] Donaldson Aff. Bates 69
(quoting Commander William S. Donaldson): "As I predicted in 1997, and as Military missile experts privately told FBI Agents in 1996, the missile's extreme energy level would carry it clear and create its own separate debris field. This is precisely what the radar video captured. The missile established a debris field... approximately 1.6 NM southwest of the aircraft nose impact point and 2.8 NM southwest of main body ocean impact... The NTSB made no effort at recovery in this area. The

FBI's records and maps, left aboard the contract boats handling the secret missile recovery effort, prove the FBI was specifically looking for a missile body as well as the stinger missile first stage pictured in their operations manual." [D Donaldson Aff. Bates 88 Ex 9: Map of debris fields & air traffic]

99. The government concealed true debris recovery locations.

99. [L Speer Aff. Bates 186 ¶ 21:
"And one of the more important parts of
the debris field is the keel beam, and the
NTSB/FBI has changed the recovery
location tag of the keel beam.... trying
to make the recovery location of the
keel beam fit a scenario that they've
already decided has happened..."]

100. Investigators in the Flight 800
smuggled out missile evidence for
independent analysis.

100. [D Donaldson Aff. Bates 75-76
(Ex D): two pages of debris field data smuggled out in 1996 by TWA Captain Terrell Stacey to investigative reporter James Sanders] [J Holtsclaw Aff. Bates 173, ¶¶ 2-4: "[In] 1996, I provided to Captain Richard Russell the Radar tape... recorded at the New York Terminal Radar Approach Control... I know this tape to be authentic because it

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was given to me by one of the NTSB accident investigation committee members.... The tape shows a primary target at the speed of approximately 1200 knots converging with TWA-800, during the climb out phase of TWA-800. It also shows a U.S. Navy P-3 pass over TWA-800 seconds after the missile has hit TWA-800.] [K Sanders Aff. Bates 180 Ex 1: Photograph of smuggled out seat padding showing reddish residue from missile exhaust.]

101. The government as well as independent investigators have determined missile firing position.

101. [C Hill Aff. Bates 47 ¶ (quoting Commander William S. Donaldson): "Suffolk County Police Department (Deputy inspector Douglas S. Mafutewich), and special agent of the FBI... Bongardt... us[ed] global positioning satellite (GPS) portable equipment coupled with a hand-bearing compass... able to more precisely determine two distinct firing positions, both of which were in range of Flight 800 when it exploded had... missiles been launched... [I] duplicated the efforts... using the same type of GPS equipment and hand-bearing compass

1 with a different mix of eyewitnesses...
2 same conclusion... surface positions at
3 sea..."] [D Donaldson Aff. Bates 94
4 Ex 15: Triangulation of Witness
5 Bearing Lines]

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7 102. The NTSB violated its statutory
8 mandate by ceding control of the probe
9 to the FBI.

10 102. [L Speer Aff. Bates 184 ¶ 12:
11 "They [NTSB] conducted the
12 investigation... They [FBI] took over
13 like a bull in a China shop... and so they
14 have screwed this investigation up so
15 bad that it probably will never be
16 straightened out. We have – well ever
17 since we were there we have felt that the
18 truth was not allowed to be sought out
19 and discovered."] [L Speer Aff. Bates
20 184 ¶ 13: "The NTSB should have been
21 primary agency in conducting the
22 investigation."] [O Meyer Aff. Bates
23 192 ¶ 5(d): "FBI forbade" NTSB
24 Witness group Chairman Norman
25 Weidermier from interviewing Major
26 Meyer.] [O Gross Aff. Bates 211 ¶¶ 4-
27 5: "Well, I actually think it's [FBI
28 investigation] unprecedented because,
by a mandate of the Congress, there is
one body, the National Transportation
Safety Board, that is entirely charged

1 with the investigation of any
2 transportation accident."] [X Lahr Aff.
3 Bates 327 Ex 5 (April 30, 2000, *Air*
4 *Line Pilots Association* submission to
5 NTSB final report): "Certain typical
6 civil investigative practices, such as
7 witness interviews and photographic
8 documentation, were prohibited or
9 sharply curtailed and controlled."] [X
10 Lahr Aff. Bates 365 Ex 10 ¶ 5 (April,
11 2000, *International Association of*
12 *Machinists and Aerospace Workers*
13 submission to NTSB final Report): "We
14 must comment on the Federal Bureau of
15 Investigation... We feel that our
16 expertise was unwelcome and not
17 wanted by the FBI.... The threats made
18 during the first two weeks of the
19 investigation were unwarranted and are
20 unforgettable!"]

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22 103. In hypothesizing the zoom-climb,
23 the government violated the party
24 process, standard accident investigation
25 procedure.

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27 103. [A Hoffstadt Aff. Bates 39 ¶ 36:
28 "TWA-800 represents a unique, notable,
and controversial event; any CFD
analysis of TWA-800 flight
performance is eminently appropriate
for public disclosure and peer review."] [C Hill Aff. Bates 50 ¶ 3: "In all

1 aircraft probe investigations it is usual if
2 not universal for investigators to share
3 information and assessments for review
4 by other investigators. It is also
5 common for experts to review one
6 another's conclusions."] [E Stalcup
7 Aff. Bates 121 ¶ 17: "Disclosure and
8 subsequent peer review of the NTSB's
9 climb calculations would... significantly
10 improve the airline community's
11 understanding of the crash."] [X Lahr
12 Aff. Bates 388 Ex 15 (Oct 14, 1997
13 NTSB *Trajectory Study* by Dennis
14 Crider): "No group was formed for this
15 activity."] [X Lahr Aff. Bates 272 ¶
16 47-48: "[T]here should have been a
17 Flight Path Group to study the trajectory
18 of TWA-800 before and after the
19 explosion. The evidence, data, and
20 conclusions of that group should be a
21 part of the public record. That group
22 was not even formed. ALPA would
23 have had a representative on this group
24 had it been formed. Since a Flight Path
25 Group was not formed, ALPA and the
26 other parties to the investigation have no
27 knowledge of the zoom-climb data and
28 conclusions furnished by the NTSB to

1 the CIA, nor any knowledge of the
2 information used by the NTSB for its
3 own video animations." [X Lahr Aff.
4 Bates 327 Ex 5 (April 30, 2000, *Air*
5 *Line Pilots Association* submission to
6 NTSB final report): "[W]e are
7 concerned that this [flight path] analysis
8 was essentially accomplished by only
9 one individual at the Board, with little
10 or no party input or participation. It is a
11 well known and accepted tenet of
12 engineering analysis that the output
13 (results) can only be as accurate as the
14 input data. As cited in the previous
15 section, the trajectory study utilized
16 several uncertain or erroneous
17 component recovery locations,
18 increasing the uncertainty of the study's
19 results. Had this study been-conducted
20 as a group activity, opportunities would
21 have existed for necessary cross-
22 checking and party 'consensus-building,'
23 and it is likely that a more thorough,
24 accurate and universally-accepted
25 product would have been generated."]
26 [Y Young Aff. Bates 394 ¶ 2(f): "None
27 of the non-governmental parties to the
28 Flight 800 investigation participated in

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the simulation work done by the CIA or NTSB, including any fact-finding that was done to support the scenarios. The non-governmental parties did not have access to the FBI Witness Summaries, which formed a significant foundation for the CIA simulation, until the middle of 1998. This was well after both simulations had been completed and were in the public domain."]

104. Military assets in military operating zone W-105 conducted classified maneuvers in the air, on the surface, and under the surface, at the time of, and in close proximity to, the disaster.

104. [D Donaldson Aff. Bates 85 Ex 7 (Irvine Affidavit): "Tom Stalcup, displayed for the first time (1999) new radar data that had been withheld by the NTSB for three years. It showed 25 vessels large enough to be detected by radar 30 miles away in the W-105 warning zone or heading for it at the time of the crash. Neither the NTSB nor the Navy has been willing to identify these vessels. This suggests that they were Navy vessels on a classified maneuver..."] [D Donaldson Aff. Bates 99 Ex 16 (NTSB Exhibit 4A Witness Group Factual Report): "[T]he P-3 crew from the aircraft, which was flying over the area during the loss of

1 TWA 800... aircraft involved was a
2 standard anti-submarine configured...]
3 [F Neal Aff. Bates 150 ¶ 3: "A number
4 of scenarios have been suggested,
5 including the idea that friendly fire...
6 brought down TWA Flight 800 through
7 some bizarre miscalculation. We know
8 from several sources that there were
9 classified military operations taking
10 place that evening just south of the Long
11 Island coast on the surface, in the air,
12 and under water, at the same time that
13 TWA Flight 800 took off. It's possible
14 that the aircraft accidentally intruded
15 into a simulated intercept scenario that
16 could have involved target vehicles. In
17 a rare malfunction, an intercept missile,
18 or missiles could have locked onto the
19 civilian airliner, or intercepted its
20 course, and the 747 was hit, instead of
21 the original target."] [J Holtsclaw Aff.
22 Bates 173, ¶¶ 2-4: "[Smuggled out
23 Radar tape "also shows a U.S. Navy P-3
24 pass over TWA-800 seconds after the
25 missile has hit TWA-800.] [U Perry
26 Aff. Bates 246 ¶¶ 9, 11: relating had
27 seen earlier that day "a military ship...
28 so close [to shore] you can see the

1 numbers on it" with a round ball on the
2 front like a radar dome.] [X Lahr Aff.
3 Bates 371 ¶ 1 Ex 12 (March 10, 1997
4 *Press Enterprise* Newspaper): Military
5 graphic]

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7 105. The government concealed that
8 one or more Naval vessels, on classified
9 maneuvers, fled the scene.

10 105. [C Hill Aff. Bates 43 ¶ 14:
11 Identifying large vessel close to Flight
12 800 which traveled at 32-knots away
13 from the disaster.] [D Donaldson Aff.
14 Bates 82 (quoting FBI response to
15 questions from Congressman): "[I]n
16 1997 the FBI first noted the presence of
17 a surface vessel, which, because of its
18 speed of between 25 and 35 knots, is
19 believed to be at least 25-30 feet in
20 length, approximately 2.9 nautical miles
21 from the position of Flight 800 at the
22 time of the initial explosion... Despite
23 extensive efforts, the FBI has been
24 unable to identify this vessel." [D
25 Donaldson Aff. Bates 84 (quoting FBI
26 SAIC James Kallstrom): "They were
27 [three] naval vessels that were on
28 classified maneuvers... [The 30-knot
track] was a helicopter."]

106. Release of the withheld records

106. [2 Hoffstadt Aff. Bates 35 ¶ 15:

1 would not cause Boeing to suffer a
2 substantial competitive injury.
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"The claim that these aerodynamic characteristics are trade secrets is contradicted by the fact that these characteristics can be calculated to a high degree of precision by any competent engineer due to the existence of a Boeing 747 Classic CFD model in the marketplace."] [Id. ¶ 18: "To the extent these Records contain information about the aerodynamic and pitching moment characteristics of the 747 Classic aircraft or publicly available modifications thereof, the claim Boeing has made efforts to maintain their secrecy is contradicted by the fact that Boeing has previously allowed and sanctioned the existence of a 747 Classic CFD model in the marketplace.] [Id. Bates 36 ¶ 24: "[T]he calculation of large vehicle aerodynamics in such applications such as... aircraft can be expected to have accuracy accurate enough to compare to or even replace experimental data." [Id. Bates 37 ¶ 25: [The Boeing Company closed three wind tunnel test facilities in the last ten years. "The increasing efficiencies and corresponding decreases in cost of

1 computing hardware, when combined
2 with modern CFD tools, are widely
3 acknowledged to be a second major
4 reason for these closures."] [Id. ¶ 27:
5 "A competent engineer would be able to
6 reproduce this configuration [in the
7 withheld records] using the 747 CFD
8 model in conjunction with the many
9 visual representations of this
10 configuration and then obtain the same
11 aerodynamic information with a high
12 degree of precision."] [Id. ¶ 28: "[T]he
13 baseline lift coefficient of the 747
14 Classic has already been reproduced
15 numerous times by engineers using this
16 CFD model and software. Therefore,
17 Boeing has likely previously judged that
18 this reduction in market value is
19 nonexistent, negligible, or acceptable.
20 Therefore also, release of the
21 information in Figures 1 and 4 of the
22 CIA document (or the information in
23 NTSB Records 6 and 8) would not
24 change the market value of Boeing's
25 data package.] [Id. Bates 38 ¶¶ 31-33:
26 "[Since Mr. Breuhaus did not provide an
27 estimate... let us assume it would
28 reduce the investment by a generous

1 25%, or \$5 million.... [A] competitor
2 would have to invest \$15 million
3 towards an enterprise that has earned
4 approximately \$10 million in revenue
5 over the past 14 years.... [a]ssuming the
6 same demand... 21 years to recover
7 their investment.... assume[ing] they
8 capture 100% of the market from
9 Boeing... assume[ing] that the demand
10 for this simulator data package remains
11 constant over the next 21 years.] **[Id.]**
12 Bates 38-39 ¶ 35: "[T]he available
13 market and associated market value of
14 Boeing's 747 Classic simulator data
15 package and related services has already
16 declined 26% [in the last 15 years] from
17 its maximum possible value due to the
18 normal and continuous removal of such
19 aircraft from service from aging,
20 obsolescence, or damage."] **[Id.]** Bates
21 39 ¶¶ 39-40, 42: "[C]ompetitor would
22 have to obtain approval and certification
23 from the national aviation regulatory
24 agency that the simulation facility very
25 closely matches the actual flight
26 characteristics of the aircraft....
27 competitor would have to present actual
28 flight test data of the 747 Classic

1 aircraft.... would require purchasing or
2 obtaining at least one 747 Classic
3 aircraft, significant on-board flight test
4 data hardware, and then subjecting this
5 aircraft to substantial modifications to
6 install this hardware. It would also
7 require ground station equipment and
8 facilities, related staffing and
9 engineering support, access to a large
10 airport, aviation fuel, maintenance
11 equipment and facilities and staff..."]
12

13 107. The government continues to
14 withhold evidence.

15 107. [AA Sephton Aff. Bates 461 ¶ 2:
16 "I have made seven FOIA requests to
17 the NTSB for Flight 800 investigative
18 records since mid-1988. The NTSB has
19 consistently contravened the FOIA
20 statute... with non-responses,
21 excessively delayed responses, illicit
22 withholding, and in at least one case a
23 false Affidavit filed with the court.
24 Examples... appear below."]

25 108. The probe was politicized.

26 108. [C Hill Aff. Bates 45, ¶ 1:
27 Members of the NTSB appointed by
28 President.] [Q Gross Aff. Bates 211 ¶
5: "Any time you take away from the
NTSB, which, by congressional charter,

1 must be in charge, and have the FBI say
2 that they will not investigate or
3 interrogate any witnesses whatsoever,
4 that immediately raises an issue in my
5 mind about the politics of it."]
6

7 109. Missile fire was the initiating
8 event of the disaster.

9 109. [C Hill Aff. Bates 43-44, ¶ 17:
10 "On more than one occasion during
11 these proceedings [press conferences] I
12 heard [former Chief, Joint Chiefs of
13 Staff] Admiral Moorer express his
14 opinion publicly and with members of
15 the press present that it was a missile
16 that brought TWA-800 down..."] [E
17 Stalcup Aff. Bates 129-30: "*TWA Flight*
18 *800 Probable Cause Announced*, "A
19 surface-to-air missile, launched from the
20 ocean off the coast of Long Island rose
21 up and exploded at or near TWA Flight
22 800." [Q Gross Aff. Bates 211 ¶ 7:
23 "When I saw photographs of the left
24 side, with that large indentation forward
25 of the wing, then I immediately was
26 curious, what in the world could cause it
27 to be dented in. It would have to be
28 something external to the aircraft." [U
Perry Aff. Bates 251 ¶ 38: "it was so
clear, and it was so vivid, was so

1 obvious that what was happening was
2 that this plane was being assaulted..."]
3

4 [X Lahr Aff. Bates 369 ¶ 8 Ex 10
5 (April, 2000, *International Association*
6 *of Machinists and Aerospace Workers*
7 submission to NTSB final Report):

8 "Approximately nineteen (19) holes in
9 the fuselage below the L3 door that
10 appear to originate from the exterior of
the aircraft."]

11
12 110. The government pursued a cover-
13 up.

14 110. [C Hill Aff. Bates 43 ¶ 16:
15 "[D]isavow[ment of] witnesses and
16 investigators... in my view prima facie
evidence that it was in pursuit of a
cover-up"] [G Krugar Aff. Bates 151 ¶
17 3: "...said, 'well, you can't tell me it
18 was anything other than a missile.'
19 [FBI SAIC] Jim Kallstrom said, 'you're
20 right, but if you quote me I'll deny it.'"]
21 [L Speer Aff. Bates 186-87 ¶ 32-33:
22 "And so for whatever reason, it's been
23 successfully covered up, the truth is not
24 known, and there are many people
25 fortunately still working on it trying to
26 discover the truth for future accident
27 prevention, to let the loved ones and
28 family and friends know what happened

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to the airplane. They feel they have a right to know, since it was never declared a crime scene... So here we are in limbo, a dedicated group of people with a mission to seek the truth, obstructed by the government..."]

111. By letter of January 26, 2001, in response to plaintiff's first CIA FOIA request, the CIA denied generating any records upon which its zoom-climb animation was based.

112. The CIA did not identify or produce most of its responsive records.

111. [X Lahr Aff. Bates 391 Ex 16 (Jan. 26, 2001, Letter from CIA to Ray Lahr): "We have researched this matter, and have learned that the pertinent data, and resulting conclusions, were provided by the National Transportation Safety Board (NTSB). CIA simply incorporated the NTSB conclusions into our videotape.... Accordingly, you may wish to submit your request to the NTSB...]

112. [3 Schulze Aff Bates 56 ¶ 31: "These 15 computer files are required in electronic e-format."] [Id. Bates 58 ¶ 33: "This Computer program is required in e-format."] [Id. Bates 70 ¶ 44: "This Computer program is required in e-format."] [Id. Bates 79 ¶ 52: "The referred to attachments are required and missing."] [Id. Bates 90 ¶ 62: "This program is required in e-

format on computer disk."] [Id. Bates 95 ¶ 67: "These missing computer files and disks are necessities for reviewing the zoom-climb video. The subject CIA electronic file disks have been withheld."] [Id. Bates 97 ¶ 69: "[C]omputer software program has been withheld."] [Id. Bates 100 ¶ 72: "[I]t is not made clear what exact work products were produced by this three month effort and in what form this work product was produced. However, it is clear that numerous computer files and computer programs were generated in some form or another."] [Id. Bates 100 ¶ 72: "The following redacted reference of Aerodynamics Science for TWA 800 is the major goal of this FOIA and does not qualify to be redacted under any justification. The following aerodynamic information is required:") [Id. Schulze Aff Bates 111 § IV: "[N]o timing sequence data for the radar data, CVR and FDR was found in any form.] [Id. Schulze Aff Bates 112 § IV: "No correlation of zoom-climb aerodynamic calculations with actual radar data was found in any

1 form.] [Id. Schulze Aff Bates 113 § IV:
2 "[N]o records of the zoom-climb
3 conclusion reaching process were
4 supplied.]

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6 113. Defendant failed to produce the
7 computer program or simulation that
8 was used to create its zoom-climb
9 animation.

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21 114. Defendant failed to produce or
22 identify the calculations underlying the
23 computer program or simulation
24 identified in the foregoing paragraph.

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28 113. [3 Schulze Aff Bates 96 ¶ 68:
"This computer program is one of the
major CIA records sought by the subject
FOIA. The subject electronic program
has been withheld."] [Id. Bates 105 ¶
82: "In displaying the presence of this
computer program and the resultant
output data graphs and tables the CIA is
providing evidence that this flight
trajectory software program for a
crippled 747 aircraft exists."] [Id. Bates
111 § IV: "[N]o electronic records of
simulation and animation programs
have been herein produced]

114. [3 Schulze Aff Bates 100 ¶ 72:
"(1) the flight/trajectory path
calculations of TWA 800 are the key
information items being sought, (2) the
establishment of this flight/trajectory
path relied heavily on computer based
data files and computer executed
computer programs using these files, (3)

1 it is impossible to make use, and derive
2 benefit from, the originally supplied
3 handwritten notes and information
4 without these computer files and
5 programs... (6) no computer files or
6 programs have yet to be provided in e-
7 format...] [Id. Bates 109 § IV:
8 "[F]ormulas and calculations performed
9 by use of computer files and executable
10 computer programs have not been herein
11 provided."] [Id. Bates 111 § IV:
12 "[P]rintouts received were not
13 sufficiently identifiable, dated...]

14
15 115. Defendant failed to produce or
16 identify the "recently declassified..."
17 report on eyewitnesses to the crash of
18 TWA Flight 800" referred to in the
19 December 2003 Washington Times
20 article.

21
22 116. The CIA participated in covering
23 up a crime which took the lives of 230
24 people.

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26 115. [1 Lahr Aff. Bates 31: *CIA on*
27 *Flight 800, Wash. Times*, Dec. 5, 2003,
28 B. Gertz & R. Scarborough.

29
30 116. [O Meyer Aff. Bates 206 ¶ 57: "If
31 you're conducting a missile shoot under
32 the main traffic control routes into New
33 York City, you have exhibited in my
34 mind depraved indifference to human
35 life. That's not an accident - under any
36 statute - any codes anywhere. That's

1 murder."]

2

3 117. The threat of missile fire is a
4 legitimate concern to the flying public.

5 117. [C Hill Aff. Bates 51 ¶ 4:
6 quoting Commander William S.
7 Donaldson): "This was the 27th large
8 aircraft hit by these missiles in the last
9 15 years. Not all of them went down."]

10 118. Flight 800 is the most
11 controversial disaster in aviation history.

12 118. [Z Leffler Aff. Bates 405-07, ¶
13 58-60.]

14 Date: September 13, 2005.

15 Respectfully submitted,

16 Captain H. Ray Lahr
17 By Counsel

18
19 John H. Clarke

1
2 **PROOF OF SERVICE – BY MAIL**
3
4

5 DISTRICT OF COLUMBIA:
6
7

8 I am a resident of the District of Columbia, over the age of 18 years. My business
9 address is 1717 K Street, NW, Suite 600, Washington, DC 20036. I am counsel
10 for plaintiff.

11 On September 13, 2005, I served a true copy of **PLAINTIFF'S STATEMENT**
12 **OF GENUINE ISSUES** on the interested parties in this action by first class mail
13 proper postage prepaid, addressed to:

14 David M. Glass, Esquire
15 Assistant United States Attorney
16 20 Massachusetts Avenue, NW
17 Room 7140
18 Washington, DC 20530
19
20

21 I declare under penalty of perjury that the foregoing is correct and that this
22 Proof of Service was executed on September 13, 2005.
23
24

25 John H. Clarke
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